

# Immigration & the Child Welfare System

***Brought to you by:  
The FCS Immigration Workgroup***

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## Presentation Topics

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- Immigrant Minors in the CW System
- Language Access and Cultural Competency
- Overview of Immigration Law: Immigration Status and Immigration Relief Options for Children, Youth, & their Families
- SFHSA Immigration Protocols
- Case Scenarios
- Resources and Questions

# Immigration and Child Welfare

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Increased numbers of immigrant children and families in the Child Welfare Systems raise numerous challenges to provide relevant, effective and culturally competent services.

Child Welfare administrators and social workers must understand the effects of migration to respond to the needs of this population in order to ensure positive outcomes of safety, permanency and well-being.

## Why do immigrants come to the US?

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- To better their lives
- Political persecution
- To reunify with their relatives
- Because of neglect, abuse, or abandonment

# Who is an immigrant?

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Chronicle / Brant Ward







How can you tell who is an immigrant?



## Immigration FACTS:

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- Immigrants from Latin American countries account for over half of the immigrant population
- Additionally, the numbers of undocumented immigrants in the US continue to rise each year, indicating 11 million undocumented residents as of 2005, with approximately 1.7 of the 11 million being children

*Source: Capps & Passel 2004*

## Immigrant Children and Families

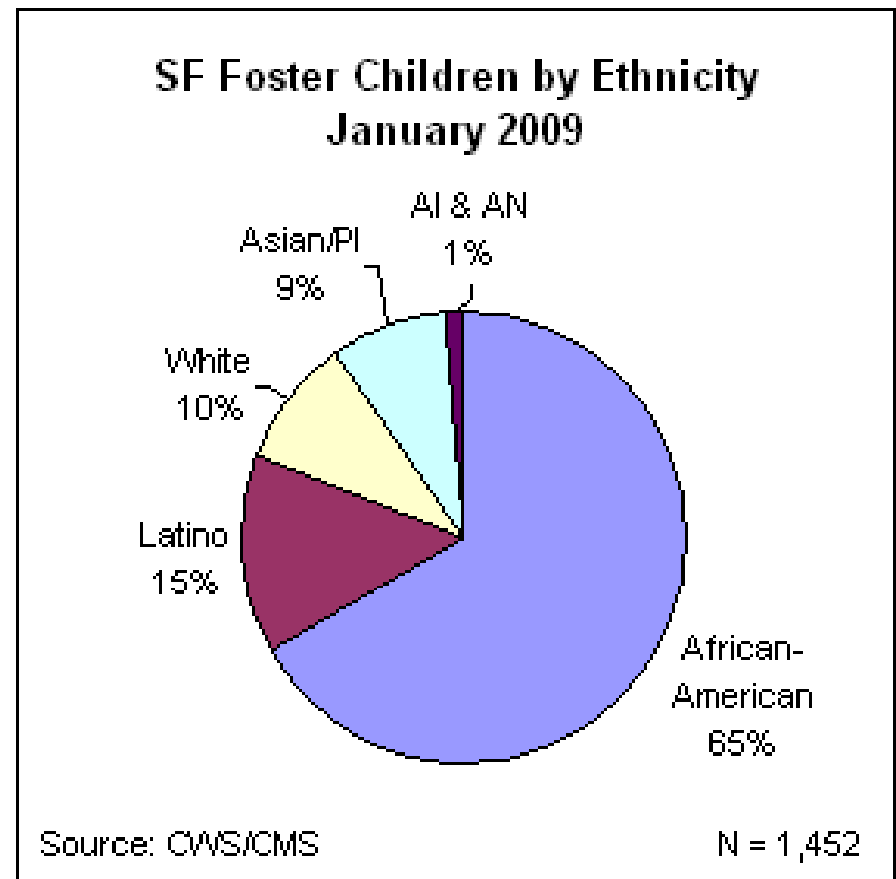
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- 21% of children in the U.S. is an immigrant or has an immigrant parent.
- 80% of the children in immigrant families are U.S. citizens.

**Source:** *“Kids Count Data Snapshot” by The Annie E. Casey Foundation (No. 4, March 2007)*

## SF Children in Foster Care by Ethnicity (January 2009)

Grouped Ethnicity	Total
African-American	962
Latino	211
White	138
Asian/PI	125
AI & AN	15
Missing	1
Grand Total	1452



# Why do immigrant children enter the Child Welfare system?

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- Poverty is one of the most important predictors of negative child outcomes. Poverty rates are generally higher among children of immigrants than among children of non-immigrants.
- Young children of immigrants are less likely to receive public benefits.

Source: *"Undercounted, Underserved: Immigrants and Refugee Families in the Child Welfare System"* Annie E Casey Foundation (2006)

<http://www.aecf.org/upload/pdf/files/familytofamily/immigration.pdf>



# Unaccompanied Minors

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- Some children came to the U.S. fleeing violence or even murder, others were seeking escape from economic deprivation, and still others were simply abandoned.
- Every unaccompanied child has his/her own story; the circumstances of each are unique.
- Different immigration relief options are available but it is important to do a thorough assessment and work in partnership with immigrant relief organizations.

# Undocumented Immigrant Families

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- Children in immigrant families are often considered at increased risk of maltreatment due to stress and pressure, resulting from migration and acculturation.

(Korbin and Spillbury 1999)

## Why are immigrant families vulnerable?

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- Complex immigration laws and policies, costly services
  - Dependence upon others for information
  - Language skills
  - Overall levels of education
  - Discrimination (ethnic, religious, socio-economic, gender, sexual orientation)
  - Limited work opportunities
  - Other factors: living arrangements, cultural practices

# Language Access and Cultural Considerations

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Video (4min.):

“Childhood in Translation”

- Language Access in Action

# Language & Cultural Considerations: Best Practices

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- Consider family's cultural practices & beliefs
- Provide services in family's primary language
  - Determine who can best provide objective, accurate interpretation for family
- If families need to read or sign forms, provide translation of that written information. Or, ensure that someone explains/interprets the information to the family
- Avoid biases and assumptions
- Other thoughts?

## Cultural Misunderstandings

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- Cultural misunderstandings impact removal, permanency, positive outcomes
- Those who are not culturally aware may label cultural practices or stress as child having “issues” i.e. co-sleeping, eating difficulties, not speaking



## Placements

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- Children may be placed in homes that do not speak their primary language, do not understand culture, and/or are outside of their home community.
- Child's well being impacted – trauma of foster care and separation intensified with inconsistency (food, language, routine, environment).
- Over time, a child may lose connection to culture and language and lose guidance for understanding identity and adapting.

## Reunification – Issues for Parents

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- Immigrant parents have added fear and intimidation of government systems – specifically court
- Navigating system particularly difficult – language barriers
- Immediate crisis and concerns need to be addressed in order to deal with reasons child is in system

## Services and Interventions Available at HSA

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- Bilingual-certified staff
- Contracts with community agencies to provide services in family's primary language
- Interpretation and Translation Services
  - Request interpretation services via HSA Civil Rights office
  - User 24/7 over-the-telephone interpretation services
  - Use translated forms, as available. Or, may request to have written forms/notices translated
- MOU's with consulates (in progress)

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# Immigration 101: Players and Immigration Status

## Department of Homeland Security

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- Immigration services used to be handled by the Immigration Naturalization Service (INS)
- In March 2003, the INS was dismantled and reorganized under the Department of Homeland Security (DHS)

## Dept. of Homeland Security: 3 Bureaus

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1. Bureau of Citizenship & Immigration Services (CIS) – Handles SIJS and other immigration applications
2. Bureau of Immigration & Customs Enforcement (ICE) – Internal Enforcement
3. Bureau of Customs and Border Protection (CBP) – External Enforcement



# Immigration Basics: US Citizenship

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- Three ways to acquire Citizenship:
  - Birth in the US or Puerto Rico
  - Birth to US citizen parent(s); maybe grandparents
  - Naturalization (apply to become a USC)
- US citizens cannot be deported
- Law is very complex. Likely that minor may **not** know whether he or she is a U.S. citizen.

## Immigration Basics: "Alien" = Non-Citizen

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This means:

- Always subject to deportation if in violation of immigration laws regardless of length of time in US or other equities (e.g. children, sick dependents) or age.
- Can be deported for even a **minor** criminal conviction and some juvenile delinquent acts

## What is lawful permanent residency or LPR?

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- Carries a “green card”
- Permanent right to live and work legally and travel in the US
- Lasts throughout life, unless becomes *deportable* for crime or other reason
- Can apply for US citizenship after 5+ years of LPR status
- Some public benefits, in-state college

## Who else is here legally?

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- Asylee/Refugee: Person given permission to live and work in US because of persecution in country of origin; can apply for green card
- People on “non-immigrant” visas
  - Temporary: For specific time period and/or purpose
  - Does not necessarily lead to lawful permanent residency
  - Examples include work visas, tourists/visitor visas, student visa, etc.

## What does it mean to be undocumented?

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- Entered on a visa that expired or entered without inspection
- Cannot work lawfully, cannot receive federal financial aid
- Can be deported if found by the DHS even if no criminal history

## Identifying an Undocumented Child

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- Many children/youth will not know what their immigration status is.
- You will need to see if there is any documentation available from the child/youth or family to confirm. Do not contact immigration authorities.
- If you are unsure of status, consult with the child's attorney who may refer to an immigration attorney.



## Impact of Legal Status

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- Different statuses carry varied entitlements to benefits, services, and legal rights.
- Legal status can present a challenge to family well being.
- It structures the immigration experience (e.g. the journey, pattern of migrations, household structure, economic opportunities, educational opportunities, the ability to maintain family ties, and the shaping of family dynamics.)

## Families with Mixed Status & Deportation

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- Immigrant parents can be deported despite having U.S. citizen children.
- Just because a parent is undocumented does not mean that he or she faces immediate deportation.

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## Immigration Options for Non-citizen Minors

## Citizenship Status

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- Is the child a U.S. citizen without knowing it?
  - U.S. citizens are not subject to immigration laws and cannot be deported.

# Citizenship Status

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If person is born outside the U.S., ask two threshold questions to see if the person automatically is a U.S. citizen. If the answer to either might be yes, refer for immigration counseling.

1. Was there a US citizen parent or grandparent at time of person's birth? Or,
2. Before person's 18th birthday, did both of these events happen (in either order)? a) S/he became a permanent resident, and b) at least one natural or adoptive (but not step-) parent having some form of custody over her/him is or becomes a U.S. citizen.

(Tip: Encourage the parent to become a citizen!)

## Forms of Immigration Relief

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- Many undocumented minors are eligible to obtain legal status in the U.S.
  - Special Immigrant Juvenile Status
  - Violence Against Women Act (VAWA)
  - Asylum
  - Trafficking Victims Protection Act
  - U Visas for Victims of Crime
  - Family Immigration and Adoption

## Special Immigrant Juvenile Status (SIJS)

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- Is the child currently under dependency court jurisdiction where the court has ruled that (a) the *child cannot be reunified with one or both* parents because of abuse, neglect or abandonment or other similar basis under state law and (b) that it would not be in the child's best interest to be returned to the home country?

## Special Immigrant Juvenile Status (SIJS)

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- Victim of abuse, neglect or abandonment or similar basis under state law
- Dependent on a juvenile court (dependency, delinquency or guardianship)
- Reunification with one or both parents not viable
- Not in the minor's interest to return to his or her home country
- Under 21 and unmarried



## SIJS (cont'd)

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- Findings must be made in a written juvenile court order that makes clear its findings are based on abuse, neglect or abandonment of the child or similar basis under law, NOT based on the desire to obtain immigration benefits.

## SIJS (cont'd) [use HB language]

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- SIJS can be granted up to age 21, but most juvenile courts will not maintain jurisdiction past 18. State court jurisdiction must be maintained through the entire application process, but new law effective March 23, 2009 changes this requirement.
- Child will not be denied SIJS based on age as long as qualified at time of application.

## SIJS (cont'd)

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- With SIJS, child is immediately eligible for permanent residence.
- [Add/speak to role of PSW]

## Documentation Required for SIJS

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- Copy of Birth Certificate (Certified Translation)
- Passport
- National identification
- 4 passport photographs
- Declaration of Indigency
- Summary of court file and findings made re abuse, neglect, and abandonment

## SIJS New Law: TVPRA

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- On Dec 23, 2008 the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008 was signed into law.
- This new law changes some SIJS requirements and procedures to expand protections for non-citizen minors.
- Effective March 23, 2009.

## SIJS New Law: TVPRA

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- Authorizes federal reimbursement to state foster care systems caring for children who obtain SIJS status (subject to appropriations being made available)

## Violence Against Women Act (VAWA)

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- Has the child been abused by a *U.S. citizen or permanent resident* spouse or parent, including adoptive, natural or step-parent?
- Has the child's parent been abused by *his/her U.S. citizen or permanent resident* spouse?

## Violence Against Women Act (VAWA)

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- For children being abused by a parent/stepparent who is a LPR or citizen
- For children whose parent is being abused by her lawful permanent resident/citizen spouse
- For parents of abusive adult US citizen children (over 21)
- Abuse = physical or subjected to extreme cruelty
- Can petition for non-abusive parent subsequently



## Asylum and Temporary Protective Status

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- Does the child come from a country that's recently experienced *civil war*, *natural disaster*?
- Does the child fear return to home country because of *persecution*?

# Asylum

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- Must be a victim of past persecution or have a well-founded fear of future persecution based on:
  - *race, religion,*
  - *political opinion,*
  - *membership in a particular social group, and/or*
  - *nationality*
- Persecution by government or private group that the government is unable or unwilling to control

## Asylum (cont'd)

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### **Social Group**

- Common, immutable characteristic, such as sex, kinship ties, color, or past experience
- Voluntary associations *may* also qualify if the characteristic is fundamental to the person's identity.

## Asylum (cont'd)

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### **Hypothetical Asylum Facts**

- Chinese child participates in activities related to Falun Gong. She is arrested, detained, and tortured for this activity.
- Child is being forced into an arranged marriage by parents. Child does not want to marry.

## Victims of Crime or Trafficking

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- Has the child been a victim of serious crime, or of alien trafficking?
- Is the child willing to cooperate with authorities to investigate or prosecute the offense?
- Consider the ***S, T, or U visas***.

## "T" Visas for Trafficking Victims

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- Must be a victim of human trafficking (sex or labor trafficking)
- Labor trafficking is the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude or debt bondage.
- Sex trafficking is a commercial sex act induced by force, fraud or coercion or in which the person has not yet obtained 18 years of age.

## "T" Visas for Trafficking Victims

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- Physical presence on account of the trafficking activity
- Would suffer extreme hardship involving unusual and severe harm upon removal
- Must show compliance with any reasonable law enforcement agency request for assistance in the investigation or prosecution of trafficking acts.

## “U” Visas for Victims of Violence

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- Suffered substantial physical or mental abuse as having been victim of certain crimes
- The criminal activity described violated the laws of the United States or occurred in the United States or the territories and possessions of the United States



## “U” Visas for Victims of Violence

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- Possesses information concerning the criminal activity
- Helpful in the investigation or prosecution of the criminal activity
- Must obtain certification from a federal, state, or local official.

## Family Immigration

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- Does the child have a *U.S. citizen or permanent resident parent or spouse* who is willing to petition for her?
- Investigate **family immigration**.

## Mixed Families: Getting a Green Card

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- A citizen child can file a petition to get a green card for a parent when s/he is 21.
- A U.S. citizen or permanent resident step-parent can file a petition for an undocumented child as long as the marriage that created the step-relationship occurred before the child's 18<sup>th</sup> birthday.

## Adoption and Immigration

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- To get the benefit of being someone's "child" for immigration purposes, *the adoption must be completed before the child's 16<sup>th</sup> birthday.*
- Exception for siblings adopted to same family: as long as one child adopted before 16<sup>th</sup> birthday, other/s can be adopted before 18<sup>th</sup> birthday.
- WARNING! This is a difficult route due to the Hague Convention.

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# Immigrant Case Scenarios

### Scenario 1:

Four days after an undocumented Mexican national mother was discharged from giving birth, the mother passed away. There are three children – age 5, 3 and newborn. The father of the older children whereabouts are unknown while the father of the newborn was in Mexico. All three children were placed in foster care. A paternal uncle was at the hospital when the mother passed away and a second cousin once removed was with the older children at the home of the deceased. The baby is a US born citizen while the older children and the mother are undocumented. The family has relatives living in Mexico and in the U.S.

### **Scenario 2: SIJS Case**

This is the case of a 16 year old teenager from Guerrero, Mexico, named Fernando. His mother and stepfather live in Mexico with their other 7 children. The siblings vary in ages. The family resides in a small town where they speak a dialect called Mexica. Fernando came to the US about 3 ½ years ago to be with his older brother, Angel. They settled in Salinas, CA where they worked the fields. Fernando came to this country to escape many years of emotional and physical maltreatment by his stepfather. Angel is only 19 years old and can not take care of Fernando at this time. Angel was involved in a bus accident that kept him in the hospital for over a month with a fractured pelvis. Both Fernando and Angel are undocumented. The case came to the Department's attention due to unaccompanied minor and caretaker incapacity.

# Questions?

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Thank you...

## FCS Immigration Workgroup

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